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No. 861

In the Supreme Court of the United States

OCTOBER TERM, 1968

BERNARD D. GROSSMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 581

BERNARD D. GROSSMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was convicted, after trial by jury in the Middle District of North Carolina, of two counts charging him with violating the Anti-Kickback Act (41 U.S.C. 51, 54) by giving gifts and gratuities to agents of a prime contractor with the United States as an inducement for future, and an acknowledgment of past, awards of subcontracts and orders to the company of which he was an officer. The court of appeals reversed his conviction and remanded for a

new trial because of prejudicial argument by the prosecutor (Pet. App. 6a-8a). It rejected, however, contentions that petitioner was entitled to a judgment of acquittal as a matter of law (Pet. App. 2a-6a).

Since the court of appeals has ordered a new trial, petitioner's questions regarding the scope of the Anti-Kickback Act are premature. Even if these questions were deemed sufficiently important to merit consideration by this Court, they should not be considered in the absence of particular evidence supporting an outstanding conviction, the validity of which depends upon their resolution. Similarly, petitioner's challenge to the court's venue over the count of the indictment alleging a gift of stock presents no question of general importance warranting immediate review, and may be mooted by the new trial which has been ordered. The gift made was not, as petitioner seems to assume, the check for $1000 which he undoubtedly delivered to a stockbroker in New York, but the shares of stock purchased with that check, which quickly found their way to North Carolina as a jury could readily believe they were intended to. Given the intangible nature of this gift, it was reasonable for the government to state in its bill of particulars that it had been delivered by "personal check to stockbroker," as this was the act of petitioner which started the shares on their way.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

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Assistant Attorney General.

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